

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

SHAWNTELLE E.,
Plaintiff,

v.

Civil No. 3:22cv365 (DJN)

KILOLO KIJAKAZI,
Acting Commissioner of Social Security,
Defendant.

FINAL MEMORANDUM ORDER
(Adopting Report and Recommendation)

This matter comes before the Court on the second Report and Recommendation (“R & R”) of the Magistrate Judge entered on April 28, 2023. (ECF No. 28.)

The first Report and Recommendation, (ECF No. 20), entered on February 6, 2023, by the Honorable Mark. R. Colombell, United States Magistrate Judge, recommended that Plaintiff’s Motion for Summary Judgment (ECF No. 14) be denied, that Defendant’s Motion for Summary Judgment (ECF No. 16) be granted and that the final decision of the Commissioner of Social Security (the “Commissioner”) be affirmed. Plaintiff objected to the first R & R, (ECF No. 21), to which the Government responded, (ECF No. 22). On March 9, 2023, the Court remanded the first R & R to Magistrate Judge Colombell to “consider[] the impact of *Shelley C.* on the instant case.” (ECF No. 23.) Magistrate Judge Colombell ordered supplemental briefing, (ECF No. 24), and the parties complied. (ECF Nos. 25, 26.)

Having reviewed the parties’ supplemental memorandums, the Fourth Circuit’s holdings in *Shelley C.* and relevant case law, the Magistrate Judge issued the second R & R, recommending that (1) Plaintiff’s Motion for Summary Judgment (ECF No. 14) be granted to the


extent that it alleges error in the ALJ's evaluation of Plaintiff's subjective complaints; (2) Defendant's Motion for Summary Judgment (ECF No. 16) be denied; and (3) the Commissioner's final decision denying Plaintiff Social Security benefits be vacated and remanded to the Commissioner for further administrative proceedings. (ECF No. 28). The time to file objections has expired and neither party has objected to the Report and Recommendation.

Having considered the matter and deeming it otherwise proper and just to do so, the Court hereby ORDERS that:

1. The Report and Recommendation of the Magistrate Judge (ECF No. 28) is ACCEPTED and ADOPTED as the OPINION of the Court;
2. Plaintiff's Motion for Summary Judgment (ECF Nos. 14) is hereby GRANTED to the extent that it alleges error in the ALJ's evaluation of Plaintiff's subjective complaints;
3. Defendant's Motion for Summary Judgment (ECF No. 16) is hereby DENIED;
4. The decision of the Commissioner is hereby VACATED and REMANDED for further administrative proceedings; and,
5. This case is now CLOSED.

Let the Clerk file this Order electronically and notify all counsel of record accordingly.

It is so ORDERED.

/s/ 

David J. Novak
United States District Judge

Richmond, Virginia
Dated: May 16, 2023